IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.6.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.13842 of 2002
& W.P.M.P.No.18699 of 2002

1. Union of India,
   rep. by its Chief General Manager(S),
   O/o the CGM, Telecommunications,
   Tamil Nadu Circle,
   Chennai-600 002.

2. The Asst. General Manager (S),
   O/o the CGM, Telecommunications,
   Tamil Nadu Circle,
   Chennai-600 002. .. Petitioners

vs.

1. G.Chandran

2. The Registrar,
   Central Administrative Tribunal,
   City Civil Court Building,
   Chennai-600 104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the second respondent, connected with order dated 4.4.2001 made in O.A.No.636 of 2000 on the file of the Central Administrative Tribunal, Chennai and quash the same.

For petitioners : Mr.S.Udayakumar, SCGSC
For respondent-1: M/s.P.Rajendran, P.Mohan Raj

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ORDER

(Order of the Court was made by F.M.Ibrahim Kalifulla,J)

The Union of India represented by its Chief General Manager (S), Telecommunications, Tamil Nadu Circle, Chennai-600 002 and the Assistant General Manager(S), Telecommunications, Tamil Nadu Circle, Chennai-600 002, are the petitioners. The challenge in the Writ Petition is to the order of the Central Administrative Tribunal passed in O.A.No.636 of 2000, dated 4.4.2001.

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2. The first respondent was the applicant before the Tribunal. The issue relates to grant of promotion for the post of Section Supervisor (Operative) under "One Time Bound Promotion" Scheme (hereinafter referred to as 'OTBP') with effect from 6.12.1996. As a matter of fact, one Thiru.A.Periasamy who was senior to the first respondent, opted to go under the restructured cadre under the OTBP scheme. Irrespective of the exercise of such option, by virtue of Circular No.27-4/87-TE-II(2), dated 16.10.1990, even the officials absorbed in the restructured cadre were entitled to draw pay in the OTBP Scheme in the previous cadre if it is advantageous to them.

3. As per the proceedings dated 26.3.1990, by referring to certain orders of the Supreme Court, it was announced by the Chief General Manager of Telecommunications that in the shortfall vacancies of Scheduled Castes and Scheduled Tribes, the minimum period of service of 16 years for grant of the OTBP promotion need not be insisted, if there were insufficient number of SC/ST officials with 16 years of service and the officials who have completed 10 years of service can be considered.

4. In the light of the said Circular dated 26.3.1990, it became imperative that Thiru.A.Periasamy who had by then, namely as on 6.12.1996, had completed 10 years of service and who belongs to SC cadre, was eligible to be considered for the grant of OTBP benefit, even though he opted to go under the restructured cadre. Unfortunately, he was not extended the said benefit on 6.12.1996, instead, the first respondent was granted the said benefit by order dated 12.6.1997. It was true that the first respondent had 11 years of service and since he also belonged to SC cadre, he was granted the benefit of OTBP under the wrong impression that Thiru.A.Periasamy had opted for restructured cadre and failed to exercise his option within the stipulated time. It is because of the above misconception of the Department, a Circular came to be issued on 28.10.1998, by which, a review came to be made of the earlier promotions granted under the OTBP scheme, which ultimately resulted in the passing of the order dated 16.3.1999, by which the OTBP granted to the first respondent came to be withdrawn, which benefit was extended to Thiru.A.Periasamy by the proceedings in Memo No.TSA/70-3/95, dated 16.3.1999. The benefit of OTBP was restored to the said A.Periasamy with effect from 6.12.1996.

5. When the first respondent challenged the said proceedings dated 16.3.1999 issued to him, withdrawing the benefit of OTBP granted to him in the letter dated 12.6.1997, the Tribunal, by the order impugned in this Writ Petition, took the view that at best, the persons who moved into the restructured cadre of Senior T.O.A., would only be entitled for stepping up of the pay on par with that of their juniors who happened to draw a higher pay scale by virtue of the grant of OTBP.

6. When we heard Mr.Udayakumar, learned SCGSC with particular reference to the proceedings of the petitioners dated 16.10.1990, we are convinced that Thiru.A.Periasamy was lawfully entitled for the grant of OTBP in the shortfall vacancy by virtue of the fact

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that as on 6.12.1996, he was fully eligible to get the OTBP benefit as against the first respondent who was far junior to him in the cadre of T.O.A. Unfortunately, it was not granted to Thiru.A.Periasamy on 6.12.1996, while the first respondent was granted the said benefit by the mistaken impression that a person who opted to go under the restructured cadre, was not entitled to be considered in the shortfall vacancy. Such a misconception of the petitioners had resulted in the deprival of the benefit of OTBP to Thiru.A.Periasamy, who was lawfully entitled for the said benefit by virtue of the decision of the Supreme Court, as has been referred to by the petitioners themselves in their communication dated 26.3.1990. It was only in the communication dated 28.10.1998, the petitioners decided to review the earlier cases and set right the mistake committed by them. Thereafter, by proceedings dated 16.3.1999, the grant of OTBP to Thiru.Periasamy was restored as from 6.12.1996 and the extension of the said benefit to the first respondent as from 6.12.1996 was withdrawn by separate communication of the same date of 16.3.1999.

7. Having regard to the above referred to facts, while no fault can be found with the action of the petitioners in having restored the grant of OTBP benefit to Thiru.Periasamy as from 6.12.1996 and also withdrawal of the said benefit from that date to the first respondent, who fortunately got the benefit from April 2001, we are of the considered view that the conclusion of the Tribunal in stating that the petitioners should have ordered only for stepping up of the pay of the senior Thiru.A.Periasamy on par with the pay of the first respondent, is not proper, since, as senior, Thiru.A.Periasamy ought to have been extended the benefit of OTBP as from 6.12.1996 in the shortfall vacancy and extension of the said benefit to the first respondent from 6.12.1996 was not proper, and therefore, it was not a mere case of setting right the anomaly by stepping up of the pay of Thiru.A.Periasamy on par with that of his junior, namely the first respondent.

8. Therefore, the action of the petitioners in having restored the benefit of OTBP to Thiru.A.Periasamy by proceedings dated 16.3.1999, is well justified. Equally, withdrawal of the said benefit as from 6.12.1996 to the first respondent by separate order dated 16.3.1999, cannot also be faulted.

9. In the circumstances, we only feel that since the first respondent was not in any way responsible for the benefit of the OTBP granted to him much earlier (i.e) from 6.12.1996, while he was actually entitled for the said benefit only from April 2001, whatever monetary gain enjoyed by him between 6.12.1996 and April 2001 by virtue of the wrong extension of the OTBP scheme during that period, cannot also be permitted to be recovered from the first respondent, even though the subsequent order dated 16.3.1999 withdrawing the said benefit to the first respondent, would result in revision of the seniority and other consequential benefits of the first respondent vis-a-vis Thiru.A.Periasamy, as a sequel to the passing of the withdrawal order dated 16.3.1999 as well as restoration of OTBP scheme to Thiru.A.Periasamy as from 6.12.1996.

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10. Therefore, while setting aside the impugned order of the Tribunal, we however direct the petitioners not to make any recovery of higher benefits extended to the first respondent between 6.12.1996 and April 2001 on which date the first respondent was validly granted the benefit of OTBP scheme.

11. The Writ Petition stands allowed with the above direction to the petitioners. No costs. W.P.M.P. is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cs

Copy to

1. The Registrar,
   Central Administrative Tribunal,
   City Civil Court Building,
   Chennai-600 104.

1 cc to M/s. P.Rajendran, Advocate, Sr. 34118
1 cc to MR.S. Udayakumar, SCGSC, Sr. 34174

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